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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 481

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, FRIGIDAIRE LOCAL 801, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 13-21) is not yet reported. The Board's decision and order (R. 30-46)[1] are reported at 129 N.L.R.B. 1379 and 130 N.L.R.B. 1286.

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[1] "R." refers to the Joint Appendix in the court of appeals.

JURISDICTION

The judgment of the court of appeals was entered on June 7, 1962 (Pet. 13), and a petition for rehearing was denied on July 5, 1962 (Pet. 22). The decree enforcing the order of the Board was entered on July 30, 1962 (Pet. 2). The petition for a writ of certiorari was filed on October 3, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that petitioner Union caused an employee to be discharged under a union security agreement for reasons other than a failure to tender the periodic dues and initiation fees required for union membership.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. 23-26 of the petition.

STATEMENT

A. The Board's Findings of Fact

Donald Snyder, an employee of General Motors Corporation for 30 years (R. 28; 76-77), had been a member of petitioner Union from August 1955 to June 1958, under the terms of a valid union security agreement (R. 21, 31; 51, 83-84). During this period he was sometimes delinquent in the payment of dues,

but made payments after the Union had notified the Company and it, in turn, had advised Snyder (R. 21, 31; 73, 84-85, 193). After the bargaining agreement between the Union and the Company expired on May 31, 1958, Snyder, who was no longer under an obligation to maintain his membership as a condition of continued employment, resigned from the Union as of June 1, 1958 (R. 21, 32; 52-53, 192, 196). The Union and General Motors signed a new labor agreement, to become effective October 21, 1958 (R. 21, 32; 196, 201). By its terms, any employee who was not a member of the Union on the effective date was required to become a member by January 19, 1959, and to pay a $5 initiation fee and dues of $3 per month, starting with January (R. 22, 32; 128, 130, 181-183). Snyder did not join the Union by January 19, and on February 23 the Union's financial secretary informally notified an employee of the Company's labor relations department that the Union would probably request Snyder's discharge (R. 22-23; 107).

Snyder was first apprised of his obligations under the new contract on February 26, 1959. On that date he asked his foreman, Ferguson, whether his membership in the Union was required in order to keep his job (R. 23, 32; 54, 146-148, Pet. 15).[2] When

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[2] Snyder had asked Ferguson for copies of the new contract in November and December 1958, but Ferguson had none. The inquiry on February 26 was prompted by the fact that Snyder, on his way to work, had received a Union leaflet which criticized the Company for failing to provide the employees with copies of the new contract (R. 22-23; 54-55).

Ferguson replied in the affirmative, Snyder stated that he would get a money order and pay his dues to the Union (*ibid.*) In order to comply with the union security provision of the new contract, Snyder owed the Union, as of that time, $11—an initiation fee of $5 and dues for January and February 1959 (R. 32; 128, 130, 182).

On February 27, Snyder mailed the Union a money order for $15, with an accompanying letter stating that it was for dues in full for October through December 1958 and for January and February of 1959 (R. 23, 32; 63, 77-78, 165-168).[3] He testified without contradiction, at the Board hearing, that he had not thought of the initiation fee and had not been informed of it (R. 104, Pet. 16). The Union received the money order on February 28, and, at the direction of Union President Shump, it was returned to Snyder without explanation on March 3 (R. 23, 32; 66, 129-130).[4]

On March 3, the Union requested General Motors, in writing, to discharge Snyder pursuant to the union security provision of the contract (R. 24, 33; 106, 110-111, 170-171). On the following day, Snyder asked a member of the Company's labor relations

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[3] On the morning of that day, Union President Shump informally indicated to representatives of General Motors that the Union's executive board had resolved to ask for Snyder's discharge, and that the Company would receive a letter to that effect (R. 110).

[4] At the Board hearing, Shump testified that the money was returned because Snyder did not "spell out" that he wanted to become a member again and that $5 of the sum transmitted was for the initiation fee (R. 131-132).

staff why the Union had returned the money order, and was later advised that the Union had done so because Snyder was not a Union member (R. 24, 33; 66-67). Snyder then obtained a membership application card and a dues check-off authorization, which he filled out and gave to the Company together with the original $15 money order (R. 24, 33; 67, 167-168). On March 18, he mailed the Union an additional $3 as dues for that month, which the Union returned, again without any explanation (R. 24, 33; 79-80, 169).

The Company did not comply with the Union's request for Snyder's discharge for several weeks, and on April 1 the Union filed a grievance demanding again that Snyder be discharged (R. 24-25, 33; 114-117, 173-176). During the discussions of this grievance, held on April 1 and 2, the Company representatives showed the Union the membership application and dues check-off authorization executed by Snyder and requested the Union to reconsider its demands in view of Snyder's long period of service and "good record" (R. 24-25; 114). The Union, however, replied that it was "too late," and that it would not accept Snyder's payment or meet with him to discuss the matter further (R. 25, 33-34; 71-73, 100, 116-119, 157).

On April 3, Snyder asked a Union committeeman for a copy of the contract and offered to pay his dues in advance for one year (R. 26, 34; 60-63). The committeeman gave him a copy of the contract but refused to accept Snyder's offer and told him that it would not do any good to take the money to the Union

hall (*ibid.*). On April 6, General Motors discharged Snyder pursuant to the Union's demand (R. 26-27, 34; 74-76, 107-108, 122-123).

B. The Board's Conclusions and Order

Upon the foregoing facts, the Board concluded that Snyder's tender on February 27 was sufficient in amount to cure his delinquency; it was made in good faith; and it was made prior to the Union's demand for his discharge. Accordingly, the Union was under an obligation before rejecting the amount tendered to explain to Snyder the mechanics of complying with the union security provisions of the contract and to give him an opportunity to allocate the tendered amount between the initiation fee and monthly dues owed. By failing to do so, the Union thus procured Snyder's discharge for reasons other than a failure to tender periodic dues and initiation fees, in violation of Section 8(b)(2) and (1)(A) of the Act. And the Company, since it had reasonable grounds for believing that the tender was sufficient, violated Section 8(a)(3) and (1) by acquiescing in the Union's demand. (R. 34-35.)[5]

The Board ordered the Union to notify Snyder and the Company that it withdrew its objections to Snyder's reinstatement; it ordered the Company to offer him reinstatement; and it ordered the Company and

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[5] The Board's conclusions were contrary to those of the Trial Examiner, who had held that the discharge was lawful because Snyder had not specified that the $15 tendered on February 27 was in payment of both the initiation fee and dues (R. 27-28).

the Union to make him whole for any loss of pay suffered by reason of the unfair labor practice (R. 37-44).

C. The Decision of the Court of Appeals

The court of appeals upheld the Board's findings and conclusions, and enforced the Board's order (Pet. 14-21).

ARGUMENT

The decision of the court below is clearly correct, it does not conflict with any other judicial decision, and no issue warranting review by this Court is presented.

1. Petitioner does not challenge the Board's findings, approved by the court below, that, before the Union requested his discharge, employee Snyder tendered to the Union in good faith a sum of money more than sufficient to cover the dues and fees which he was obliged to pay under the union security provision of the collective bargaining contract, but that the Union returned the money to Snyder without explanation and demanded his discharge for non-payment of dues and fees. On these facts, the Board was fully warranted in concluding that the Union had caused Snyder to be discharged for reasons other than a failure "to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership," and that its action thus violated Section 8(b)(2) of the Act.[6] See

[6] Section 8 (b)(2) makes it an unfair labor practice for a labor organization "to cause or attempt to cause an em-

Radio Officers' Union v. *National Labor Relations Board*, 347 U.S. 17, 40-41; *National Labor Relations Board* v. *Aluminum Workers International Union*, 230 F. 2d 515, 520 (C.A. 7); *National Labor Relations Board* v. *International Woodworkers of America*, 264 F. 2d 649, 656-658 (C.A. 9), certiorari denied, 361 U.S. 816.

2. Petitioner contends, however, that the court below exceeded its reviewing authority because it affirmed the Board on a ground which required additional findings, and, instead of remanding the case to the Board for these findings, the court made them itself (Pet. 8-12). There is no substance to this contention.

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ployer to discriminate against any employee in violation of subsection (a)(3) . . . ." Section 8(a)(3) permits an employer and a union to enter into a union security arrangement whereby union membership may be required as a condition of continued employment, but it further provides that "no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership . . . ."

Since Snyder had made a sufficient tender *prior* to the Union's formal request for his discharge, this case does not present the issue of whether the tender would have been sufficient had it been made after the discharge request but before the employer had acted on that request. In *Aluminum Workers' International Union*, 112 N.L.R.B. 619, the Board held that a tender made at any time before actual discharge would insulate the employee against discharge. In *General Motors Corp. (Packard Electric Division)*, 134 N.L.R.B. No. 116, the Board qualified this view, holding that the tender must be made before there is a lawful request for discharge.

Thus, petitioner argues that the court of appeals applied a more limited principle than did the Board —the Board having held that the tender was sufficient so long as it was made prior to the request for discharge, whereas the court held that the tender must be made "within a reasonable time after the employee has learned or reasonably should have learned that he must join the Union in order to keep his job" (Pet. 18). Petitioner concludes that the court's rationale requires two findings which were not previously made by the Board—(1) that Snyder first learned of his Union obligation on February 26, 1959, and (2) that he could not reasonably have learned of it earlier (Pet. 8-9).

We believe that petitioner misinterprets the court's opinion. It seems clear that, considered in the context of the opinion as a whole, the question whether the employee "reasonably should have learned" becomes an issue only if it appears that he has not actually learned of his obligation. Since Snyder was apprised of his Union obligation on February 26, 1959, and made a tender the next day, there was no occasion for the court to consider whether he should have "reasonably learned" of that obligation.[8] More-

[8] This is confirmed by the following passage from the court's opinion (Pet. 18): "Snyder was not forever barred from Union membership when he failed by January 19th to offer an application for membership along with the necessary monies, inasmuch as the record supports a view that *he was not apprised of the necessity of membership before February 26.* His technically belated tender, on February 27, 1959, of more than the necessary sums for membership, was received by the Union *within a reasonable time after he was informed of this necessity*" (emphasis added).

over, contrary to petitioner's assumption, the Board did make a finding that Snyder first learned of his obligation to join the Union on February 26, 1959.[9] Accordingly, the decision of the court below does not rest on any findings which were not previously made by the Board, and there was thus no necessity for a remand to the Board.[10] See *Helvering* v. *Gowran*, 302 U.S. 238, 245; *Chae-Sik Lee* v. *Kennedy*, 294 F. 2d 231, 233-234 (C.A. D.C.), certiorari denied, 368 U.S. 926.

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[9] The Board stated (R. 32): "There is no indication that Snyder was made cognizant of his obligation at this time [February 23, when a Union official informally advised the Company that Snyder had resigned from membership and had failed to rejoin], but on February 26, 1959, while talking to his supervisor, Snyder was informed that he would be required to join the Union." In the light of Snyder's prior unsuccessful efforts to obtain copies of the contract and the fact that the Union itself was protesting the lack of such copies on the morning of February 26 (see note 2, *supra*), it is only reasonable to interpret the foregoing Board statement—as did the court (Pet. 15)—as a finding that Snyder was not apprised of his obligation until February 26.

[10] The cases relied on by petitioner (Pet. 10-11) are distinguishable, for there, unlike here, additional findings were required.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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